

FILED

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF ALABAMA  
 MIDDLE DIVISION

U.S. DISTRICT COURT  
 N.D. OF ALABAMA

BERTIE DARLENE MARTIN,

Plaintiff,

v.

GREATER GADSDEN HOUSING  
 AUTHORITY, et al.,

Defendants.

CV-99-AR-0744-M

**ENTERED**

MAY 18 1999

MEMORANDUM OPINION

Presently before the court is a "Motion for Award of Attorneys' Fees to Plaintiff," filed by plaintiff on May 7, 1999. After trial on the merits, this court entered judgment in favor of plaintiff, finding that defendants had violated 42 U.S.C. § 1983 by depriving plaintiff of due process in the termination of her federal housing subsidy. The present motion seeks attorneys fees, as a prevailing plaintiff, under 42 U.S.C. § 1988. Defendants oppose the motion with regard to both the hours claimed by plaintiff's counsel and the hourly billing rate requested. For the reasons set out below, the court determines that the motion is due to be granted.

Based upon the court's review of the pleadings, the trial record, and the documents and affidavits submitted in support of or opposition to the motion, the court finds that the number of hours expended in preparation and prosecution of Martin's action

by attorneys Strawn and Knowles is reasonable under the circumstances. Despite defendants' contention, it is not unreasonable that plaintiff's counsel expended nearly twice as many hours as did defendants' counsel. Even if defendants' counsel had worked twice as long as plaintiff's counsel, the facts of the case could not have been changed, and as a result, the outcome of the trial would not have been different. No amount of preparation could have produced a winning legal argument for defendants, given the circumstances. Defendants' counsel was therefore wise not to waste his clients' time and money. On the other hand, plaintiff's counsel was wise to spend more time on this case, as their efforts resulted in thorough, persuasive pleadings and effective, persuasive trial presentation. Even their greater expenditure of time amounted to only 30.5 hours. Having reviewed the itemized listing of hours worked by plaintiff's counsel for each discrete task of research, writing, preparation for trial, and actual trial, the court finds that this amount of time is not excessive under the circumstances. Accordingly, the attorney fees ultimately awarded to plaintiff will be based upon 30.5 billable hours, which include 27 hours by attorney Strawn and 3.5 hours by attorney Knowles.

The appropriate hourly rate is also in dispute. Attorney Strawn represents to the court that his "base" fee is \$180 per hour, but he requests an enhanced hourly rate of \$200. As

grounds for the proposed enhanced rate, plaintiff argues that there are a limited number of qualified attorneys in North Alabama who are willing to take such housing rights cases, that attorney Strawn produced excellent results, that the law of this case was relatively complex, that cases of this nature have little prospect for large recoveries, and that there is a "need to ensure that qualified attorneys are willing to represent Plaintiffs in such otherwise unprofitable cases." Plaintiff describes her case, and others like it, as relatively "undesirable," because attorney fees are not only contingent upon success at trial, but also upon approval by the court, and because of the relative complexity of federal housing law. In the present action, plaintiff's counsel was also required to prepare pleadings on an expedited basis, due to imminent danger that plaintiff and her family might be evicted from their home. Plaintiff argues that, absent an enhanced fee in this case, attorneys will not have enough incentive to represent similarly situated clients. Attorney Knowles, who assisted Strawn for only a few hours, seeks lesser fees at an hourly rate of \$125. Plaintiff has submitted the affidavit of George C. Longshore, a disinterested attorney in Birmingham, in support of her claim that these hourly rates are within the range of prevailing market rates in similar litigation for attorneys of similar experience, knowledge, skill and training. Defendants contest these hourly rates, claiming that the "prevailing market rates in the relevant

legal community... is between \$85 and \$95 per hour." Defendants also support their contention by affidavit of a disinterested attorney, George Ford of Birmingham.<sup>1</sup>

The large discrepancy between the parties' assessment of the reasonable fee rates is probably due to their differing definitions of the relevant "market" from which to estimate the prevailing market rate. Defendants contend that prevailing rates in the City of Gadsden, Alabama form the appropriate standard. However, the affidavit of George Ford, submitted by defendants in support of their arguments, states that his assessment of reasonable rates is based upon his experience "in Gadsden and in Birmingham, and in the Northern District of Alabama." Furthermore, Ford's affidavit does not contend that the hourly rates claimed by plaintiff's counsel fall outside the range of prevailing market rates. Instead, Ford attests only that "a rate of \$95.00 per hour is reasonable" for similar attorneys in similar litigation. Plaintiff, like Ford but unlike defendants,

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<sup>1</sup> Mr. Ford's affidavit was faxed to the court's chambers, as was defendants' brief. Leave to deviate from the normal filing rigors was neither requested by defendants nor granted by this court. Because the original version of Ford's affidavit has not been filed with the Clerk, only a copy presently exists before the court, which cannot be filed as evidence. As such, there is technically no evidence before the court to support defendants' contention that the prevailing market rate is substantially lower than plaintiff contends. However, because the existence or non-existence of this evidence does not alter the ultimate disposition of the present motion, the court will analyze the issue as though defendants have provided evidence to undergird their opposition. In other words, the court will proceed as if Ford's motion had been filed. The record, however, will not contain the affidavit.

assumes that the appropriate standard is the prevailing market rate charged by other counsel of similar experience, knowledge, skill, and training in similar litigation throughout the entire Northern District of Alabama.

Without determining its precise contours and boundaries, this court finds that the relevant legal community, for purposes of determining the prevailing market rate, embraces more than the City of Gadsden, contrary to defendants' argument. Gadsden is not located so far from Birmingham that attorneys from both places cannot practice in either place. Indeed, most cases before this court which originate in Gadsden are tried in Birmingham. At the very least, attorneys practicing before this court from Gadsden, Birmingham, or anywhere in between form portions of the relevant legal community. On the basis of this finding, and in consideration of the affidavits submitted by the parties, the court is satisfied that the prevailing market rate for attorney fees, in similar cases and for attorneys of similar experience and skill, etc., encompasses a range from \$85-\$200.

Attorney Strawn attests that he receives a base hourly rate of \$180 per hour, which is within the range of prevailing market rates. This court is not persuaded that an enhanced hourly rate is appropriate for the present litigation, because this court disagrees with plaintiff's characterization of her case as "undesirable." Given the factual background of this particular case, a prospective plaintiff's attorney should have recognized

the substantial likelihood of success on the merits and the limited number of hours required for adequate preparation. This court finds that the relative complexity of the legal issues is already reflected in the number of billable hours allowed. If, due to their superior expertise, plaintiff's counsel required fewer hours to complete these tasks than other lawyers of less skill might have required, such expertise is already reflected in their hourly rates, which are at the upper end of the range of prevailing market rates. In short, this court believes that no upward adjustment of Strawn's or Knowles' base rate is necessary to provide them, or others like them, with sufficient incentive to undertake representation of similar cases in the future.

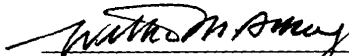
Having determined that plaintiff shall be allowed to claim attorney fees for 27 hours of work by Strawn, at an hourly rate of \$180, and for 3.5 hours of work by Knowles, at an hourly rate of \$125, the court now applies the simple "lodestar" approach by multiplying the hours worked by the appropriate rate as follows:

<u>Attorney</u>	<u>Hours</u> <u>Worked</u>	<u>Hourly</u> <u>Rate</u>	<u>Total</u> <u>Fee</u>
Strawn	27.0	\$180	\$4860.00
Knowles	3.5	\$125	<u>\$437.50</u>
Total Fee for Both Attorneys			\$5297.50

Accordingly, this court determines that plaintiff's motion for award of attorneys' fees is due to be granted, and plaintiff

is entitled to recover from defendants fees in the amount of \$5297.50. A separate and appropriate order will be entered.

DONE this 18<sup>th</sup> day of May, 1999.

A handwritten signature in black ink, appearing to read "William M. Ackers", written over a horizontal line.

WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE